

**IN UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

CHAD HOGAN,

Plaintiff,

v.

CITY OF MONTGOMERY, et al.,

Defendants.

)
)
)
)
)
)
)
)
)
)
)

CASE NO. 2:05-cv-687-F

ANSWER

Defendants, City of Montgomery, Chief A.D. Baylor and Major J.C. West, in the above styled action, by and through the undersigned counsel, as answer to Plaintiff's Complaint, state the following:

JURISDICTION AND VENUE

1. Defendants admit that this Court has jurisdiction, but deny the remaining allegations in paragraph 1 of Plaintiff's Complaint and demand strict proof thereof.

2. Defendants deny the allegations in paragraph 2 of Plaintiff's Complaint and demand strict proof thereof.

PARTIES

3. Defendants are without sufficient information to admit or deny the allegations of paragraph 3 of Plaintiff's Complaint and, therefore, deny the allegations of paragraph 3 and demand strict proof thereof.

4. Admitted.

5. Admitted.

6. Admitted.

7. Defendants admit that Major J. C. West is over the age of 19 and an employee of the City of Montgomery and a superior officer over Caulfield, Cook and Gordon but deny the remaining allegations of paragraph 7 of Plaintiff's Complaint and, therefore, demand strict proof thereof.

8. Admitted.

9. Defendants are without sufficient information to admit or deny the allegations of paragraph 9 of Plaintiff's Complaint and, therefore, deny the allegations of paragraph 9 and demand strict proof thereof.

10. Admitted.

11. Defendants deny the allegations in paragraph 11 of Plaintiff's Complaint and demand strict proof thereof.

NATURE OF PROCEEDINGS

12. Defendants deny the allegations in paragraph 12 of Plaintiff's Complaint and demand strict proof thereof.

FACTS

13. Defendants reference and incorporate herein their responses to paragraphs 1 through 12 above as if fully setout herein.

14. Defendants deny the allegations contained in paragraph 14 of the Plaintiff's Complaint and demand strict proof thereof.

15. Defendants deny the allegations contained in paragraph 15 of the Plaintiff's Complaint and demand strict proof thereof.

16. Defendants deny the allegations contained in paragraph 16 of the Plaintiff's

Complaint and demand strict proof thereof.

17. Defendants deny the allegations contained in paragraph 17 of the Plaintiff's Complaint and demand strict proof thereof.

18. Defendants deny the allegations contained in paragraph 18 of the Plaintiff's Complaint and demand strict proof thereof.

19. Defendants deny the allegations contained in paragraph 19 of the Plaintiff's Complaint and demand strict proof thereof.

20. Defendants deny the allegations contained in paragraph 20 of the Plaintiff's Complaint and demand strict proof thereof.

21. Defendants deny the allegations contained in paragraph 21 of the Plaintiff's Complaint and demand strict proof thereof.

22. Defendants deny the allegations contained in paragraph 22 of the Plaintiff's Complaint and demand strict proof thereof.

23. Defendants deny the allegations contained in paragraph 23 of the Plaintiff's Complaint and demand strict proof thereof.

24. Defendants deny the allegations contained in paragraph 24 of the Plaintiff's Complaint and demand strict proof thereof.

25. Defendants deny the allegations contained in paragraph 25 of the Plaintiff's Complaint and demand strict proof thereof.

26. Defendants deny the allegations contained in paragraph 26 of the Plaintiff's Complaint and demand strict proof thereof.

27. Defendants deny the allegations contained in paragraph 27 of the Plaintiff's Complaint and demand strict proof thereof.

CAUSES OF ACTION

28. Defendants reference and incorporate herein their responses to paragraphs 1 through 27 above as if fully setout herein.

COUNT I – 42 U.S.C. § 1983 – FALSE ARREST/FALSE IMPRISONMENT

29. Defendants deny the allegations contained in paragraph 29 of the Plaintiff's Complaint and demand strict proof thereof.

30. Defendants deny the allegations contained in paragraph 30 of the Plaintiff's Complaint and demand strict proof thereof.

31. Defendants deny the allegations contained in paragraph 31 of the Plaintiff's Complaint and demand strict proof thereof.

32. Defendants deny the allegations contained in paragraph 32 of the Plaintiff's Complaint and demand strict proof thereof.

33. Defendants deny the allegations contained in paragraph 33 of the Plaintiff's Complaint and demand strict proof thereof.

34. Defendants deny the allegations contained in paragraph 34 of the Plaintiff's Complaint and demand strict proof thereof.

35. Defendants deny the allegations contained in paragraph 35 of the Plaintiff's Complaint and demand strict proof thereof.

36. Defendants deny the allegations contained in paragraph 36 of the Plaintiff's Complaint and demand strict proof thereof.

37. Defendants deny the allegations contained in paragraph 37 of the Plaintiff's Complaint and demand strict proof thereof.

38. Defendants deny the allegations contained in paragraph 38 of the Plaintiff's

Complaint and demand strict proof thereof.

39. The allegations in paragraph 39 of Plaintiff's Complaint are not allegations against Defendants but a statement of legal conclusion. To the extent that a response is necessary, Defendants deny the allegations contained in paragraph 39 of the Plaintiff's Complaint and demand strict proof thereof.

40. The allegations in paragraph 40 of Plaintiff's Complaint are not allegations against Defendants but a statement of legal conclusion. To the extent that a response is necessary, Defendants deny the allegations contained in paragraph 40 of the Plaintiff's Complaint and demand strict proof thereof.

41. Defendants deny the allegations contained in paragraph 41 of the Plaintiff's Complaint and demand strict proof thereof.

**COUNT II - 42 U.S.C. § 1983 – ABUSE OF PROCESS OR
IN THE ALTERNATIVE MALICIOUS PROSECUTION**

42. Defendants deny the allegations contained in paragraph 42 of the Plaintiff's Complaint and demand strict proof thereof.

43. Admitted.

44. Defendants deny the allegations contained in paragraph 44 of the Plaintiff's Complaint and demand strict proof thereof.

45. Defendants deny the allegations contained in paragraph 45 of the Plaintiff's Complaint and demand strict proof thereof.

46. Defendants deny the allegations contained in paragraph 46 of the Plaintiff's Complaint and demand strict proof thereof.

47. Defendants deny the allegations contained in paragraph 47 of the Plaintiff's Complaint and demand strict proof thereof.

48. Defendants deny the allegations contained in paragraph 48 of the Plaintiff's Complaint and demand strict proof thereof.

49. Defendants deny the allegations contained in paragraph 49 of the Plaintiff's Complaint and demand strict proof thereof.

50. Defendants deny the allegations contained in paragraph 50 of the Plaintiff's Complaint and demand strict proof thereof.

**COUNT III - COMMON LAW MALICIOUS PROSECUTION OR,
IN THE ALTERNATIVE, ABUSE OF PROCESS**

51. Defendants deny the allegations contained in paragraph 51 of the Plaintiff's Complaint and demand strict proof thereof.

52. Defendants deny the allegations contained in paragraph 52 of the Plaintiff's Complaint and demand strict proof thereof.

53. Defendants deny the allegations contained in paragraph 53 of the Plaintiff's Complaint and demand strict proof thereof.

54. Defendants deny the allegations contained in paragraph 54 of the Plaintiff's Complaint and demand strict proof thereof.

55. Defendants deny the allegations contained in paragraph 55 of the Plaintiff's Complaint and demand strict proof thereof.

56. Defendants deny the allegations contained in paragraph 56 of the Plaintiff's Complaint and demand strict proof thereof.

57. Defendants deny the allegations contained in paragraph 57 of the Plaintiff's Complaint and demand strict proof thereof.

58. Defendants deny the allegations contained in paragraph 58 of the Plaintiff's Complaint and demand strict proof thereof.

COUNT IV – 42 U.S.C. § 1985 CONSPIRACY

59. Defendants deny the allegations contained in paragraph 59 of the Plaintiff's Complaint and demand strict proof thereof.

60. Defendants deny the allegations contained in paragraph 60 of the Plaintiff's Complaint and demand strict proof thereof.

61. Defendants deny the allegations contained in paragraph 61 of the Plaintiff's Complaint and demand strict proof thereof.

62. Admitted.

63. Defendants deny the allegations contained in paragraph 63 of the Plaintiff's Complaint and demand strict proof thereof.

64. Defendants deny the allegations contained in paragraph 64 of the Plaintiff's Complaint and demand strict proof thereof.

COUNT V – 42 U.S.C. § 1986 FAILURE/REFUSAL TO PREVENT VIOLATIONS

65. Defendants deny the allegations contained in paragraph 65 of the Plaintiff's Complaint and demand strict proof thereof.

66. Defendants deny the allegations contained in paragraph 66 of the Plaintiff's Complaint and demand strict proof thereof.

67. Defendants deny the allegations contained in paragraph 67 of the Plaintiff's Complaint and demand strict proof thereof.

68. Defendants deny the allegations contained in paragraph 68 of the Plaintiff's Complaint and demand strict proof thereof.

COUNT VI – MUNICIPAL LIABILITY

69. Defendants deny the allegations contained in paragraph 69 of the Plaintiff's

Complaint and demand strict proof thereof.

70. Defendants deny the allegations contained in paragraph 70 of the Plaintiff's Complaint and demand strict proof thereof.

71. Defendants deny the allegations contained in paragraph 71 of the Plaintiff's Complaint and demand strict proof thereof.

72. Defendants deny the allegations contained in paragraph 72 of the Plaintiff's Complaint and demand strict proof thereof.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Defendants plead the general issue. Defendants generally deny all material allegations of the Complaint and deny that Plaintiff is entitled to any relief.

SECOND AFFIRMATIVE DEFENSE

Defendants aver that Plaintiffs Complaint and each count and cause thereof fails to state a cause of action against Defendants upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE

Defendants plead that Plaintiff's Complaint should be dismissed in there is no evidence of a policy or practice adopted which violated Plaintiff's constitutional rights nor do Defendants have a policy or custom which is unconstitutional.

FOURTH AFFIRMATIVE DEFENSE

Defendants aver that a municipality is liable only for its own wrong and cannot be held liable under the principles or theories alleged by plaintiff to wit: respondeat superior.

FIFTH AFFIRMATIVE DEFENSE

Defendants plead as a defense immunity from claims of intentional acts. a municipality

cannot commit intentional acts or act with malice.

SIXTH AFFIRMATIVE DEFENSE

Defendants plead sovereign or substantive immunity.

SEVENTH AFFIRMATIVE DEFENSE

Defendants plead qualified and/or discretionary function immunity pursuant to *ALA. Code* §6-5-338(a) – (b) (1975).

EIGHTH AFFIRMATIVE DEFENSE

Defendants plead state actor immunity pursuant to the Eleventh Amendment of the Constitution of the United States and Article I § 14, Constitution of Alabama (1901).sovereign and/or substantive immunity.

NINTH AFFIRMATIVE DEFENSE

Defendants plead that their actions or practices did not cause a violation of Plaintiff's constitutional rights.

TENTH AFFIRMATIVE DEFENSE

Defendants submit that they have not engaged in a conspiracy for purposes of depriving, directly or indirectly, any person or class of persons from equal protection of the laws or due process.

ELEVENTH AFFIRMATIVE DEFENSE

Defendants submit that they have not engaged in any overt act in the furtherance of the object of a conspiracy alleged by plaintiffs and that no actions by them have proximately caused injury to plaintiffs or deprived plaintiffs of any right or privilege.

TWELFTH AFFIRMATIVE DEFENSE

Defendants plead that Plaintiff was guilty of wantonness, recklessness, intentional acts or

criminal acts which proximately caused or contributed to the injuries or damages they claim.

THIRTEENTH AFFIRMATIVE DEFENSE

Defendants plead non-compliance with statutory ante litem claim statutes. *ALA. Code* §§ 11-47-23 and 11-47-192. (1975)

FOURTEENTH AFFIRMATIVE DEFENSE

Defendants plead the general issue and deny any allegations not specifically admitted and demand strict proof thereof.

FIFTEENTH AFFIRMATIVE DEFENSE

Defendants plead that Plaintiff is not entitled to damages for emotional distress and suffering for the actions alleged under the circumstances stated.

SIXTEENTH AFFIRMATIVE DEFENSE

Defendant, City of Montgomery, pleads immunity from punitive damages.

SEVENTEENTH AFFIRMATIVE DEFENSE

Defendants plead Alabama's statutory cap on damages. *ALA. Code* §§ 11-47-190 and 11-93-2.

EIGHTEENTH AFFIRMATIVE DEFENSE

That any award of punitive damages would violate Defendants' constitutional rights in that a determination of punitive damages under federal or state law is vague, is not based on any objective standards and is not rationally related to any legitimate governmental purposes.

RESERVATION OF RIGHTS

Defendants reserve the right to amend these affirmative defenses as allowed by the Court.

Respectfully submitted this the 25th day of August, 2005.

/s/ Kimberly O. Fehl
Kimberly O. Fehl (FEH001)
ASB-8054-E67K
Assistant City Attorney

OF COUNSEL:

Legal Department

City of Montgomery

Post Office Box 1111

Montgomery, Alabama 36101-1111

334.241.2050

FAX 334.241.2310

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a copy of the above and foregoing to the attorneys listed below by hand delivery or by placing a copy of same in the United States Mail, postage prepaid, this 25th day of August, 2005:

Jay Lewis, Esq.
Andy Nelms, Esq.
Post Office Box 5059
Montgomery, AL 36103

/s/ Kimberly O. Fehl
Of Counsel